

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT
NO. 2022-P-0191

AMY DOUCET and DENISE SUTTON,
as CO-GUARDIANS of PAUL GREGORY DOUCET,
Plaintiff-Appellant

v.

FCA US LLC
Defendant-Appellee

ON APPEAL FROM
ESSEX SUPERIOR COURT - NEWBURYPORT DIVISION

DOCKET NO. 2177CV00578

BRIEF FOR THE PLAINTIFF-APPELLANT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. To establish specific personal jurisdiction over Defendant, FCA US LLC ("FCA") under the Massachusetts long-arm statute (G.L. c.223A § 3(a)), Plaintiff, Paul Gregory Doucet ("Doucet") was required to show that FCA transacted business in this Commonwealth and that the plaintiff's claims arise therefrom. Doucet produced evidence that FCA sold a 2004 Chrysler Sebring ("Sebring") in Massachusetts through one of its Massachusetts dealerships. Doucet later purchased the Sebring and was riding as a passenger in it when it crashed, resulting in his traumatic brain injuries. Did Doucet make a prima facie showing that FCA is subject to specific jurisdiction under the Massachusetts long-arm statute?

2. To establish specific personal jurisdiction over FCA under the due process clause to the United States Constitution, Doucet was required to establish that FCA has "minimum contacts" in the forum state. Doucet produced evidence that FCA sold the Sebring that subsequently caused Doucet's injuries through one of its established Massachusetts dealerships. Did Doucet

satisfy the “minimum contacts” requirement for specific jurisdiction over FCA?

3. When seeking jurisdictional discovery, a party must present facts to show why personal jurisdiction would be found if discovery were permitted. Doucet has presented facts showing that FCA—a nationwide automobile manufacturer and seller—maintains an extensive distribution network for its vehicles, both new and used, in Massachusetts. In light of these facts, was Doucet entitled to jurisdictional discovery?

SUMMARY OF THE ARGUMENT

The exercise of specific personal jurisdiction over FCA satisfies the Massachusetts long-arm statute and comports with due process. FCA introduced the Sebring, the product that eventually injured Doucet, into the market by delivering it to a Chrysler authorized dealership in Rhode Island, which in turn transferred it to a Chrysler dealership in Massachusetts (Sudbay). Sudbay then leased this car as a new product, along with the Chrysler warranties, to a Massachusetts resident. RAI/79;348;357.

FCA does not dispute that it has contacts in Massachusetts and does business here. FCA contends its Massachusetts contacts are not sufficiently related to Doucet's claims to support the exercise of jurisdiction. FCA's argument is based on two facts: Doucet resides in New Hampshire, and his injuries occurred there rather than Massachusetts. Those (non-controlling) facts do not defeat this Court's jurisdiction over FCA. Having chosen to market this car in Massachusetts, FCA knew it could be held accountable by a jury in this Commonwealth for defects

in this product causing injury (regardless of where the injury occurred).

The trial court's finding that the application of the so-called relatedness test did not support jurisdiction was erroneous. The relatedness test is easily satisfied in this case, as FCA admits it sold the Sebring in Massachusetts and actively cultivates a market for its products in Massachusetts. RAI/26-27;44. FCA continues to maintain relationships with Chrysler-branded dealerships in Massachusetts selling its products. RAI/44;86. On these facts, jurisdiction over FCA is proper and fair.

The focus of paramount importance in deciding specific jurisdiction and the defendant's related connection with the forum is the defendant's connection with the forum rather than the fortuitous site of injury.

In Judge Janice W. Howe's Memorandum of Decision and Order on FCA's Motion to Dismiss, the personal jurisdiction analysis improperly focused on Doucet and ignored FCA's connection to Massachusetts, the Sebring, and the claims in this case. RAI/17. Doucet has never suggested that no connection is required between the forum, the defendant, and the litigation.

His claims were caused by a vehicle that was first sold in Massachusetts by Sudbay-one of FCA's Massachusetts dealerships-and that vehicle subsequently caused injury to Doucet, a resident of a contiguous state. These facts are sufficient to confer jurisdiction on Massachusetts courts.¹

By conducting substantial business in the forum, FCA has enjoyed the benefits and protections of the Commonwealth's laws, including the formation of an effective market for its products. RAI/469-500. FCA's argument and the trial court's ruling prioritizing the need for a "causation-only" approach is not in accord with the rationale employed by the United States Supreme Court (hereafter "SCOTUS"). The strict causal relationship between FCA's in-state activities and this litigation—argued by FCA and applied by the lower court—is neither reasonable nor a proper application of the law.

Because Doucet made a prima facie showing of facts demonstrating FCA is subject to jurisdiction in the Essex Superior Court, the burden shifted to FCA to

¹ In this very case, when it was improvidently removed to the Massachusetts Federal District Court, that Court addressed and rejected FCA's jurisdictional challenge, and then remanded this case to the Superior Court. RAI/76-95. The Essex Superior Court Judge's decision not to acknowledge jurisdiction was mistakenly decided.

demonstrate that the exercise of jurisdiction over it would be unfair.

FCA has not and cannot meet this burden. Through FCA's predecessor Chrysler's long-established network of Massachusetts dealerships, FCA sells new and used automobiles, including the Sebring. RAI/89. Further, FCA encourages a market for those vehicles in Massachusetts by partnering with Massachusetts dealerships. RAI/89;469-500. It is therefore foreseeable that FCA might be obligated to defend a suit involving one of those vehicles in a Massachusetts court.

This is particularly true in the present case. The Sebring in question was sold as a new car in Massachusetts and remained here for approximately eight years before making its way into Hudson, New Hampshire by way of the resale market, where it eventually injured Doucet. New Hampshire and Massachusetts are contiguous states, with Hudson, New Hampshire sitting approximately sixty (60) miles from Sudbay's location in Gloucester, Massachusetts.

STATEMENT OF THE CASE

On May 24, 2015, Doucet was riding in the front passenger seat of the Sebring when it was involved in a moderate frontal collision in Hudson, New Hampshire. RAI/347-48. Doucet was wearing his seat belt. RAI/348. Doucet sustained a traumatic brain injury when the Sebring's passenger side A-pillar, which supported the vehicle's windshield, struck Doucet in his head. RAI/347-48. Doucet is a resident of New Hampshire and purchased the Sebring in a private sale. RAI/346;360.

A. Nature of the Appeal

Doucet appeals from the Essex Superior Court's allowance of FCA's Motion to Dismiss Pursuant to Mass. R. Civ. P. 12(b)(2) for lack of personal jurisdiction. RAI/16-33. Doucet filed a timely Notice of Appeal, which was docketed on February 17, 2022. RAI/9. Doucet received Notice of Assembly of the Record on February 28, 2022. RAI/8. Doucet docketed his appeal on March 8, 2022. RAI/8.

B. Procedural History

Amy Doucet and Denise Sutton, as co-guardians of Doucet (hereinafter "Doucet's co-guardians"), filed a

complaint against FCA and Sudbay Chrysler Dodge, Inc. in 2018 in New Hampshire Superior Court, Hillsborough County.² RAI/458-468. FCA removed the case to the New Hampshire Federal District Court³ and then filed a motion to dismiss, asserting a lack of personal jurisdiction. RAI/362-365. Hon. Joseph N. Laplante allowed FCA's motion on the grounds that Doucet had not met his burden to show "relatedness" between Doucet's claims and FCA's New Hampshire contacts. RAI/366-385. However, Judge LaPlante noted that courts in the First Circuit "have found the relatedness element satisfied where the defendant sells the allegedly-defective product line in the forum state, or causes it to be sold there, even if the defendant itself may not have sold the individual item that injured the plaintiff in that state." RAI/376.

Doucet then filed this action in Suffolk Superior Court on February 14, 2019.⁴ RAI/339-355. Again, FCA removed the case to Massachusetts Federal District Court⁵ and filed a motion to dismiss asserting a lack of personal jurisdiction over it in Massachusetts.

² Hillsborough Superior No. 226-2018-CV-00251.

³ US Dist. Ct. for Dist. of NH No. 1:18-CV-00627-JL.

⁴ Suffolk Superior No. 1984-CV-00509.

⁵ US Dist. Ct. for Dist. of MA No. 1:19-CV-10514-ADB.

RAI/362-365. Doucet opposed FCA's motion and filed a motion to remand the case back to Suffolk Superior Court. RAI/72. At FCA's urging, the Massachusetts Federal District Court addressed FCA's motion to dismiss before addressing Doucet's motion for remand. RAI/76.

Hon. Allison D. Burroughs denied FCA's motion to dismiss and issued a thorough opinion concluding that FCA was subject to personal jurisdiction in Massachusetts in this case, in part because Doucet's injuries arise from FCA's solicitation and sale of the Sebring. RAI/76-95. Judge Burroughs identified the sale of Chrysler products in Massachusetts as having constituted the "first step in a train of events" that resulted in the relevant injury. RAI/86. Judge Burroughs further explained that, because FCA's business in Massachusetts resulted in the Sebring entering the market, and that product subsequently caused Doucet severe injury, Doucet's claims fall within the broad construction of 223A § 3(a). RAI/86. Lastly, Judge Burroughs recognized that with respect to due process, relatedness was easily met because the in-forum sale of the Sebring by an in-forum dealership

sufficiently related to FCA's contacts with Massachusetts. RAI/87-88.

Recognizing that no diversity existed given the presence of Defendant, Sudbay, a Massachusetts corporation, Judge Burroughs remanded the case to Suffolk Superior Court. RAI/96. Subsequently, FCA filed a motion to dismiss for the third time, again challenging personal jurisdiction and this time challenging venue. RAI/344. In November of 2020, Hon. Paul D. Wilson transferred the case to the Essex Superior Court⁶ and stayed the decision as to personal jurisdiction because a potentially dispositive case — *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021) — was pending before the SCOTUS at the time. RAI/344.

After SCOTUS issued its decision on March 25, 2021, FCA and Doucet were permitted to file supplemental briefs in light of the *Ford Motor Co.* decision. RAI/5. After a hearing on August 12, 2021, Hon. Janice W. Howe issued a decision allowing FCA's motion to dismiss. RAI/17.

⁶ Essex Superior No. 2177-CV-00578.

FACTUAL AND PROCEDURAL BACKGROUND

A. FCA Distributed the Sebring Through A Massachusetts Dealership.

The Sebring was manufactured by FCA's predecessor in interest, DaimlerChrysler, and then shipped to a dealership in Rhode Island. RAI/79. The Sebring was then transferred to Sudbay,⁷ located in Gloucester, Massachusetts. RAI/79. On May 8, 2003, Sudbay leased the Sebring to a resident of Needham, Massachusetts. RAI/79;358. When the Sebring was leased, the new car warranties provided by Chrysler were assigned to the lessee. Approximately three years later on July 27, 2006, Sudbay sold the Sebring to a resident of Gloucester, Massachusetts. RAI/358. Again, the existing Chrysler warranties ran to the purchaser.

Thereafter, the Sebring was sold two more times via private sales between Massachusetts residents. RAI/358-359. It remained in Massachusetts until April 19, 2011, when it was purchased by a New Hampshire resident. RAI/79;359-60. Doucet then purchased the Sebring in a private sale in August of 2013 and owned it for less than two years before the crash that led

⁷ Sudbay is also a defendant in this case, but is not involved in this appeal.

to this lawsuit. RAI/360.

B. FCA's Massachusetts Presence

In May of 2015, when Doucet's claims arose, FCA⁸ had extensive contacts with Massachusetts, including but not limited to:

- a. FCA partnered with Massachusetts dealerships, including but not limited to Sudbay, to sell FCA's products and conduct its own business under FCA's brand names. RAI/65;79;
- b. FCA provided warranties on all vehicles sold/leased to Massachusetts to consumers who purchase its vehicles there, regardless of where those consumers reside and regardless of whether those vehicles were manufactured by FCA or the pre-bankruptcy Chrysler entity. RAI/318;
- c. The Sebring was first sold in Massachusetts by Sudbay. RAI/79;358; and
- d. FCA directed its products to be sold in Massachusetts through Sudbay, among other Massachusetts dealerships. RAI/44;65;86.

ARGUMENT

I. Legal Standard

Massachusetts courts may exercise personal jurisdiction over FCA, a non-resident, if FCA's conduct falls within the long-arm statute, G.L. c. 223A, § 3, and the exercise of jurisdiction comports with due process. *Good Hope Industries, Inc. v. Ryder*

⁸ FCA voluntarily assumed liabilities of Chrysler, LLC, the entity that manufactured the Sebring, as part of Chrysler, LLC's bankruptcy proceedings. For purposes of this litigation, all of Chrysler, LLC's Massachusetts contacts are imputed to FCA. RAI/81-84.

Scott Co., 378 Mass 1, 5-6 (1979). The "shared concern" of the [long arm] statute and the due process precedents is whether the claim in some significant degree arises from defendant's contacts with Massachusetts." *Cambridge Literary Properties, Ltd. v. Goebel Porzellanfabrik G.m.b.H. & Co. Kg.*, 295 F.3d 59, 66 (1st Cir. 2002).

"Because the long-arm statute imposes specific constraints on the exercise of personal jurisdiction that are not coextensive with the parameters of due process... a determination under the long-arm statute is to precede consideration of the constitutional question." *SCVNGR, Inc. v. Punchh, Inc.*, 478 Mass. 324, 325 (2017).

II. The Exercise of Jurisdiction Over FCA Satisfies the Long Arm Statute (G.L. c. 223A §3(a)) and the Requirements of Due Process.

For a nonresident to be subject to the authority of a Massachusetts court, the exercise of jurisdiction must satisfy both Massachusetts's long-arm statute, G. L. c. 223A, § 3, and the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution. *Exxon Mobil Corp. v. Att'y Gen.*, 479 Mass. 312, 314, (2018); *SCVNGR, Inc.*, *supra* at 325. Personal jurisdiction may be general or

specific.⁹ Only specific personal jurisdiction has been alleged in this case.

"For jurisdiction to exist under § 3(a), the facts must satisfy two requirements—the defendant must have transacted business in Massachusetts, and the plaintiff's claim must have arisen from the transaction of business by the defendant." *Exxon Mobil Corp. v. Att'y Gen.*, supra at 317. Put another way, "Specific jurisdiction exists when there is a demonstrable **nexus** between a plaintiff's claims and a defendants' forum-based activities, such as when the litigation itself is founded directly on those activities." *Mass. Sch. of Law at Andover, Inc. v. American Bar Ass'n*, 142 F.3d 26, 34 (1st Cir. 1998) (emphasis added).

In that context, the "'constitutional touchstone' ... remains whether [FCA] established 'minimum contacts' in" this state, *Bulldog Inv. Gen. P'ship v. Sec'y of the Commonwealth*, 457 Mass. 210, 217 (2010) (hereafter "Bulldog") (citation omitted). This normally entails an inquiry into whether: (i) the non-resident

⁹ A business is a "resident," and therefore subject to the forum's general jurisdiction, if the business is domiciled or incorporated or has its principal place of business in the forum State. *Exxon Mobil Corp. v. Att'y Gen.*, supra at 314.

purposefully directed its activities at Massachusetts; (ii) a nexus exists between those contacts and the "claim," and (iii) the assertion of jurisdiction does "not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 217, quoting *Tatro v. Manor Care, Inc.*, 416 Mass. 763, 773 (1994) (citation omitted).

It is undisputed that FCA has purposefully availed itself of the Massachusetts forum. All that remains in issue is the second "**nexus**" or "relatedness" factor. It is the "relatedness" factor that the lower court and FCA have focused on to conclude that specific jurisdiction over FCA is non-existent. Respectfully, this conclusion is in error.

The relatedness test requires the claim to "arise out of or relate to the defendant's contacts with the forum." *Bulldog, supra* at 217 (citation omitted). The test is a "flexible, relaxed standard" that focuses on the "nexus between the contacts and the claim." *Adelson v. Hananel*, 652 F.3d 75, 81 (1st Cir. 2011); *Tatro, supra* at 774. Massachusetts courts have employed a "but for" test, *Tatro, supra* at 770, which federal courts have referred to as a more "liberal approach." *See, e.g., Weinberg v. Grand Circle Travel*,

891 F. Supp. 2d 228, 245 (D. Mass. 2012); *see also* *Lyle Richards Int'l v. Ashworth, Inc.*, 132 F.3d 111, 114 (1st Cir. 1997) (describing “but for” test as a liberal interpretation of “arising from” designed to favor ... asserting jurisdiction”).

In short, the scope of the relatedness requirement is at the heart of this jurisdictional dispute.

A. Section 3(a) of the Long-Arm Statute is Satisfied As Doucet's Claims Arise From FCA's Purposeful Transaction of Business in Massachusetts

The “Massachusetts long-arm statute, [Mass. Gen. Laws ch.] 223A, § 3, provides that “[a] court may exercise personal jurisdiction over a person ... as to a cause of action in law or equity arising from the person’s one or more specific acts or omissions, as enumerated in the statute.” *SCVNGR, Inc.*, *supra* at 328. Section 3(a) grants jurisdiction “over a person ...as to a cause of action in law or equity arising from the person’s ...transacting any business in this commonwealth.” G.L. c. 233A.

“The ‘arising from’ clause in G.L. c. 233A, §3 is to be generously construed in favor of asserting personal jurisdiction, by applying a ‘but for’

causation test.” *Workgroup Technology Corp. v. MGM Grand Hotel, LLC*, 246 F. Supp. 2d 102, 112 (D. Mass. 2003). The “arising from” inquiry is focused on whether the defendant’s contacts with the Commonwealth constitute “the first step in a train of events that results in the personal injury.” *Tatro, supra* at 770. See also *Packs v. Bartle*, No. 18-cv-11496, 2019 WL 1060972, at *3 (D. Mass. Mar. 6, 2019). “[A] claim arises from a defendant’s transaction of business in the forum State if the claim was made possible by, or **lies in the wake of**, the transaction of business in the forum State.” *Access Now, Inc. v. Otter Prods., LLC*, 280 F. Supp. 3d 287, 291 (D. Mass. 2017) (emphasis added).

“[S]olicitation of business from residents of the Commonwealth, by a defendant or its agent, will suffice to satisfy” the “transacting any business” requirement. *Tatro, supra* at 318. See *Bulldog, supra* at 217 (solicitation sent to Massachusetts resident, coupled with Web site accessible in Massachusetts, made it “reasonable for the [nonresident] to anticipate being held responsible in Massachusetts”).

Section 3(a)’s “arising from” requirement was satisfied where a defendant’s solicitation of business

constituted the "first step" in a train of events that results in personal injury. *Tatro, supra* at 770. In *Tatro*, a hotel located close to Disneyland solicited business from a Massachusetts council that had previously held a conference at the hotel. *Id.* at 765. The Supreme Judicial Court held that this activity satisfied Section 3(a) of Massachusetts' long-arm statute. The court reasoned that the "but-for" interpretation of the statute's "arising from" language permitted jurisdiction in that case because the plaintiff's reservation of a hotel room was considered the "first step in a train of events that results in the personal injury." *Id.* at 770.

Here, the "first step" in the train of events that led to Doucet's injury was the first sale (lease) of the vehicle in Massachusetts. RAI/79;358. It is undisputed that FCA's predecessor placed the Sebring into the stream of commerce and distributed it to multiple Massachusetts residents through Sudbay, a Massachusetts dealership located in Gloucester—approximately sixty miles from where Doucet's crash occurred. RAI/79;86;376. FCA continues to distribute vehicles through Sudbay. RAI/86. FCA continues to cultivate a market ensuring a distribution network for

its product in Massachusetts. RAI/86. FCA has therefore solicited—and continues to solicit—Massachusetts residents to purchase its products thus transacting business in Massachusetts. *Compare Tatro, supra* at 767. This solicitation of business satisfies Section 3(a) and fully justifies the assertion of jurisdiction over FCA to defend a suit involving a vehicle sold through its established Massachusetts distribution network. FCA's business in Massachusetts resulted in the Sebring entering the market. That same product subsequently caused Doucet's severe injury. As such, Doucet's claims unambiguously fall within the broad construct of M.G.L. 223A § 3(a).

**B. The Requirements of Federal Due Process
Have Been Met Because FCA Has Established
Minimum Contacts in Massachusetts**

The Due Process Clause of the 14th Amendment to the United States Constitution requires that an out-of-state defendant such as FCA have minimum contacts in a forum state for jurisdiction to attach. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (hereafter "*Burger King*"); *Int'l Shoe Co. v. State of Wash., Off. Of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945) (hereafter "*Int'l Shoe*").

The minimum contacts analysis involves three categories: relatedness, purposeful availment, and reasonableness. *Packs*, *supra* at *6 (quoting *Adelson v. Hananel*, 510 F.3d 43, 49 (1st Cir. 2007)). "The plaintiff's claim must arise out of, or relate to, the defendant's forum contacts." *Burger King*, *supra* at 472. See *Commonwealth v. Exxon Mobil Corp.*, 2021 WL 3493456 at *8 (Mass. Super. June 22, 2021) (acknowledging SCOTUS's recognition in *Ford Motor Co.* that the language "or relate to" "contemplates that some relationships will support jurisdiction without a causal showing").

1) FCA Has Purposefully Availed Itself of the Massachusetts Forum

In products liability cases, "it is the defendant's purposeful availment that makes jurisdiction consistent with 'traditional notions of fair play and substantial justice.'" *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 880 (2011) (hereafter "Nicastro"). See *Asahi Metal Indus. v. Superior Ct. of Cal.*, 480 U.S. 102, 107 (1987) (hereafter "Asahi"); *Micheli v. Techtronic Industries, Co., Ltd.*, 2012 WL 6087383, at *9 (D. Mass. 2013). Analysis of purposeful availment centers on two

aspects: voluntariness and foreseeability. *See Nowak v. Tak How Investments, Ltd.*, 94 F.3d 708, 716 (1st Cir. 1996); *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201, 207 (1st Cir. 1994).

To satisfy the purposeful availment prong, a plaintiff must show that the "defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court's jurisdiction based on those contacts." *Lewis v. Dimeo Const. Co.*, 2015 WL 3407605, at *4 (D. Mass. May 27, 2015).

When a defendant appears in the forum and does not raise personal jurisdiction objections, this fact will bolster a finding of purposeful availment. *Tom's of Maine v. Acme-Hardesty Co.*, 565 F. Supp. 2d 171, 182 (D. Me. 2008). This court may take judicial notice of the docket entries and pleadings filed in separate cases. *See Howe v. Prokop*, 21 Mass. App. Ct. 919, 920 (1985); *Home Depot 1 v. Kardas*, 81 Mass. App. Ct. 27, n. 9 (2011). FCA has repeatedly appeared in Massachusetts courts without asserting a lack of

specific personal jurisdiction.¹⁰

Introduction of a product into the stream of commerce, together with the defendant's efforts to serve the market in the forum State, i.e., marketing the product through a distributor who has agreed to serve as a sales agent in the forum state, will satisfy the purposeful availment prong. *Asahi, supra* at 112; see *Unicomp, Inc. v. Harcros Pigments, Inc.*, 994 F. Supp. 24, 28 (D. Me. 1998) (holding that "carefully and knowingly choos[ing] distributors located in this region" satisfied the test for purposeful availment).

The lower Court and FCA interpret *Ford Motor Co.*, 141 S. Ct. 1017 (2021) to support a finding that the defendant's contacts with Massachusetts do not establish "relatedness." Respectfully, that is erroneous.

¹⁰ For a non-exhaustive list of examples, see the following: *Bill Deluca Chry-Jeep Dodge, Inc. v. FCA US LLC*, Essex Superior Ct. No. 1677CV00216, US Dist. Ct., Dist. of MA No. 1:16-CV-10496-JCB (See RAI/469); *Cormier v. FCA US LLC*, Essex Superior Ct. No. 1877CV00366 (See RAI/501); *Cameron v. FCA US LLC*, Hampshire Superior Ct. No. 1880CV00205, appeal pending at 2021-P-0402; *Doubleday v. FCA US LLC*, Middlesex Superior Ct. No. 2281CV01809, US Dist. Ct., Dist. of MA No. 2181-CV-00144; *Cerretani v. FCA US LLC*, Suffolk Superior Ct. No. 1984CV00599H; *Chevy Auto Body Inc. v. FCA US LLC*, Suffolk Superior Ct. No. 1884CV00271; *Commonwealth of Mass. v. FCA US LLC*, Suffolk Superior Ct. No. 19CV00086; *Erickson v. FCA US LLC*, Suffolk Superior Ct. No. 1884CV03820; *Mutlick v. FCA US LLC*, Suffolk Superior Ct. No. 1984CV00894; and *Werbicki v. FCA US LLC*, Suffolk Superior Ct. No. 2184CV00159.

Recently, on similar facts, the court in *Choi v. General Motors, LLC*, 2021 WL 4133735 (C.D. Cal. Sept. 9, 2021) reasoned that the “relatedness” inquiry was satisfied when the defective vehicle was sold in California, yet the accident occurred in Colorado:

[Defendant] reads *Ford Motor* as “conclud[ing] that the mere fact of sale...is insufficient to create the requisite connection” for purposes of establishing specific personal jurisdiction. Nowhere in the Supreme Court’s opinion is such a proposition found. ...The only reason the question of the location of the sale came up in *Ford Motor* was because the defendant had asserted “that jurisdiction is improper because the particular car involved in the crash was not first sold in the forum State, nor was it designed or manufactured there,” an argument the Supreme Court rejected. But the Supreme Court’s rejection of that argument meant only that personal jurisdiction could not be had *only* in a State that met one of those conditions; **it did not reject the proposition that personal jurisdiction could be had in at least those States meeting one or more of those conditions.**

Choi, 2021 WL 4133735, at *6 (internal citations omitted) [emphasis added].

In short, the *Choi* court concluded that “reliance on [*Ford Motor*] as standing for the extremely broad proposition that jurisdiction may no longer rest on the location of original sale is misplaced,” and that “the Supreme Court merely held ‘that jurisdiction may also be proper in the State

where the incident occurred.'” Docket No. 42, at 8:23-27. 2021 WL 4133735, *6-8 (C.D. Cal.).

Notably absent from FCA’s Motion to Dismiss is any argument that it has not conducted purposeful activity in Massachusetts. FCA cannot avoid the fact that the initial lease of the Sebring as a new vehicle in Massachusetts through Sudbay amounts to affirmative conduct directed at Massachusetts. The fact that FCA successfully operates an extensive network of dealerships that sells its vehicles in Massachusetts, including the Sebring, satisfies the purposeful availment prong. As noted above, the fact that FCA has voluntarily appeared in this forum multiple times without contesting the Commonwealth’s jurisdiction bolsters the finding that FCA has purposefully availed itself of the Massachusetts forum. *Tom’s of Maine*, *supra* at 182.

2) The Nexus Between FCA’s In-State Activity and Doucet’s Claims Supports the Exercise of Jurisdiction

The relatedness inquiry asks whether the plaintiff’s claims arise out of or are related to the defendant’s in-state contacts. *Bulldog*, *supra* at 217. “[T]here must be ‘an affiliation between the forum and the underlying controversy, principally, [an] activity

or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" *Ford Motor Co., supra* at 1025 (quoting *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1780 (2017)). See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

"This 'flexible, relaxed standard,' *N. Laminate Sales, Inc. v. Davis*, 403 F.3d 14, 25 (1st Cir. 2005) (quoting *Pritzker v. Yari*, 42 F.3d 53, 61 (1st Cir. 1994)), requires only that the claim have a "demonstrable nexus" to the defendant's forum contacts." *Knox v. MetalForming, Inc.*, 914 F.3d 685, 690-91 (1st Cir. 2019). See *Chouinard v. Marigot Beach Club & Dive Resort*, No. CV 20-10863-MPK, 2021 WL 2256318 (D. Mass. June 3, 2021) (clarifying that the fact Plaintiff sustained injuries at a foreign hotel was not determinative as to the issue of personal jurisdiction).

This standard simply requires some "'connection' between a plaintiff's suit and a defendant's [in-state] activities." *Ford Motor Co., supra* at 1026. Rejecting Ford's "causation-only" approach to relatedness, the Court explained the breadth of the

requirement of this "connection" as applied to nationwide product sellers:

As in *World-Wide Volkswagen*, the Court did not limit jurisdiction to where the car was designed, manufactured, or first sold. Substitute Ford for Daimler, Montana and Minnesota for California, and the Court's "illustrat[ive]" case becomes... the two cases before us. To see why Ford is subject to jurisdiction in these cases (as Audi, Volkswagen, and Daimler were in their analogues), consider first the business that the company regularly conducts in Montana and Minnesota. ...Small wonder that Ford has here conceded "purposeful availment" of the two States' markets.

Ford Motor Co., *supra* at 1028. The Court clarified that jurisdiction should not "ride on the exact reasons for an individual plaintiff's purchase, or on his ability to present persuasive evidence about them." *Id.* at 1029. The "causation-only" approach, pressed by both Ford and FCA, "finds no support in this Court's requirement of a 'connection' between a plaintiff's suit and a defendant's activities." *Id.* at 1026. See *Chouinard*, *supra* at *8, n. 13 (acknowledging SCOTUS's rejection in *Ford Motor Co.* case of the notion that a "strict causal relationship" is necessary to satisfy relatedness).

Fatally to both Ford's and FCA's argument, the Court explained that the "demand for an exclusively causal test of connection ... is inconsistent with our caselaw." *Id.* Indeed, the Court has "**never** framed the specific jurisdiction inquiry as always requiring proof of causation - i.e., proof that the plaintiff's claim came about because of the defendant's in-state conduct." *Id.* at 1026 (emphasis added). See *Adams v. Gissell*, No. CV 20-11366-PBS, 2021 WL 2786277, at *9, n. 13 (D. Mass. May 24, 2021) ("Ford Motor Co. is consistent with First Circuit precedent, which recognizes that while its presence or absence is important, causation is not a per se requirement of specific jurisdiction."); *Harlow v. Children's Hosp.*, 432 F.3d 50, 61 (1st Cir. 2005) (citing *Nowak, supra* at 715-17 (declining to require strict adherence to a proximate cause standard; in absence of causation, finding "meaningful" nexus between defendant's in-forum activities and harm suffered by plaintiff)).

Introduction of a product into the market that eventually injures a plaintiff, together with efforts to ensure a distribution network for that product in Massachusetts, satisfies the relatedness requirement. *Lewis, supra* at *4. See, e.g., *Micheli, supra*, at *9.

"[P]lacing a product into the stream of commerce creates a material connection with claims based on the use of the product." *Jackson v. Sunset Ladder Co., Inc.*, 2015 WL 7451179 at *3 (D. Maine Nov. 23, 2015). See *Nicastro, supra* at 880-81.

In *Duarte v. Koki Holdings America, Ltd.*, 2018 WL 6179511, at *1 (D. Mass. Nov. 27, 2018), the plaintiff's employer purchased a table saw in Massachusetts that had been distributed through a Lowe's distribution center in Connecticut. In a product liability suit against the manufacturer of the saw, the court held that relatedness was satisfied as to Koki, an out-of-state defendant. The plaintiff satisfied the relatedness test "by showing that Koki distributed the saw to Lowe's and employed a sales representative in Massachusetts." *Id.* at *2.

The situation in the present case is identical. FCA delivers its products both directly into Massachusetts, and to distributors who then transfer FCA's products into Massachusetts. RAI/65;86;469. Doucet has satisfied the relatedness test by showing that FCA distributed the Sebring to Sudbay in Massachusetts and employs Sudbay as one of its Massachusetts distributors.

FCA's in-state conduct forms an important and material element of proof in Doucet's case because the Sebring entered the stream of commerce in Massachusetts. It simply cannot be said that defending against this suit would be unforeseeable when the Sebring was first sold in Massachusetts and remained here for nearly eight years before making its way to Doucet, less than sixty miles from Sudbay. This, taken together with FCA's active efforts to cultivate a market for its products in Massachusetts, plainly satisfies the relatedness requirement.

**3) The Exercise of Jurisdiction Over FCA
is Reasonable and Fair**

The hallmark of reasonableness in the context of personal jurisdiction is "fair play and substantial justice." *Ford Motor Co.*, *supra* at 1024, quoting *Int'l Shoe*, *supra* at 320. "When a controversy is related to or 'arises out of' a defendant's contacts with the forum, the Court has said that a 'relationship among the defendant, the forum, and the litigation' is the essential foundation of personal jurisdiction." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

Where a court has determined that a nonresident defendant has requisite minimum contacts, the defendant must "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Exxon Mobil Corp. v. Att'y Gen.*, *supra* at 323 (quoting *Burger King*, *supra* at 477).

SCOTUS has identified five relevant criteria, referred to as *Gestalt* factors, to be examined when considering if the exercise of jurisdiction is reasonable: (1) the defendant's burden of appearing; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the judicial system's interest in obtaining the most effective resolution of the controversy; and (5) the common interests of all sovereigns in promoting substantive social policies. *Burger King*, *supra* at 477; see *Foster-Miller, Inc. v. Babcock & Wilcox Canada*, 46 F.3d 138, 150 (1st Cir. 1995).

"When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant." *Plixer*

Int'l., Inc. v. Scrutinizer GmbH, 905 F.3d 1, 13 (1st Cir. 2018) (quoting *Asahi*, *supra* at 114). *See also Pritzker*, *supra* at 64 (noting that only the demonstration of a "special or unusual burden" will serve to give any weight to this factor).

FCA has not and cannot identify any special burden, beyond the inconveniences that apply to any litigation involving parties located in different cities or states. Indeed, FCA has appeared in this forum multiple times before and has not contested jurisdiction;¹¹ therefore, this factor is easily met in favor of jurisdiction.

Massachusetts recognizes basic public policies underlying the field of products liability of providing a cause of action for compensation of individuals injured by defective products. *Cosme v. Whitin Mach. Works, Inc.*, 417 Mass. 643, 647-48 (1994). The Restatement (Second) of Torts articulates the rationale inherent in this policy:

[P]ublic policy demands that the burden of accidental injuries caused by products intended for consumption be placed upon those who market them ... and that the [user] of such products is entitled to the maximum protection at the hand of

¹¹ See FN 10, *supra*.

someone, and the proper persons to afford it are those who market the products. *Id.* at 648, quoting Restatement (Second) of Torts § 402A comment c (1965).

All of the *Gestalt* factors favor Doucet. As discussed *supra*, it is no burden for FCA to appear in Massachusetts, as it has done previously. Doucet's injuries are severe. It is certainly more convenient and effective for his case to be heard in Massachusetts, with Sudbay, as the Sebring was placed into the stream of commerce and remained for several years before it subsequently caused his traumatic brain injury. Indeed, Massachusetts has been acknowledged as a materially convenient venue for claims of a New Hampshire resident on similar facts. *See Lewis*, 2015 WL 3407605, at *6 (recognizing that litigating product liability case in Massachusetts would be more convenient for New Hampshire plaintiffs than in Liechtenstein, where defendant was domiciled).

Although Doucet is a New Hampshire resident, Massachusetts has an interest in adjudicating this dispute, as FCA sells its products here and is subject to Massachusetts laws and regulations. While not dispositive, "a plaintiff's choice of forum must be accorded a degree of deference with respect to the

issue of its own convenience.” *Sawtelle v. Farrell*, 70 F.3d 1381, 1395 (1st Cir. 1995). Additionally, the common interests of all sovereigns in promoting substantive social policies may afford the exercise of jurisdiction in Massachusetts some weight, because Massachusetts has a significant interest in “ensuring that products sold within its borders are safe for use by consumers” regardless of where they are consumed. *See Nowak, supra* at 718-19.

The weight of the *Gestalt* factors supports the exercise of jurisdiction over FCA. There is no special burden that weighs against the exercise of jurisdiction. It is both reasonable and fair to require FCA to appear in Essex Superior Court.

III. Under the Prima Facie Standard, Doucet Produced Evidence That Supports a Finding That the Exercise of Jurisdiction Over FCA Satisfies the Long Arm Statute (G.L. c. 223A §3(a)) and Comports With Due Process.

“The most typical method of resolving a motion to dismiss for lack of personal jurisdiction allows the court ‘to consider only whether the plaintiff has proffered evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction.’” *Cepeda v. Kass*, 62 Mass. App. Ct. 732, 737 (2004) (quoting *Boit v. Gar-Tec Prod., Inc.*, 967

F.2d 671, 676 (1st Cir. 1992)). "The prima facie showing of personal jurisdiction must be based on evidence of specific facts set forth in the record." *Boit, supra* at 675.

The trial court evaluates a prima facie showing using the following method:

In evaluating a prima facie showing, the court acts as a data collector, not as a fact finder. In conducting the requisite analysis under the prima facie standard, we take specific facts affirmatively alleged by the plaintiff as true (whether or not disputed) and construe them in the light most congenial to the plaintiff's jurisdictional claim. The burden is one of production, not one of persuasion. [P]rima facie evidence ... [is] evidence which, standing alone and unexplained, maintains the proposition and warrants the conclusion to support which it is introduced. At trial, prima facie evidence retains its legal force until evidence is introduced that would allow the fact finder to reach a contrary conclusion. At the time that the issue is adjudicated and "evidence is introduced that contradicts the prima facie evidence, ... the prima facie evidence loses its artificial force and a factual issue arises.... In these circumstances, the prima facie evidence is no more significant than any other evidence, but must be weighed equally with all other evidence to determine whether a particular fact has been proved.

Cepeda, supra at 737-38 (internal citations omitted).

It is true that the plaintiff must eventually establish jurisdiction by a preponderance of the

evidence at an evidentiary hearing or at trial.

Cepeda, supra at 738. “But until such a hearing is held, a prima facie showing suffices, notwithstanding any controverting presentation by the moving party, to defeat the motion.” *Id.*, quoting *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2d Cir. 1981).

Unless and until an evidentiary hearing is held, “a prima facie showing suffices, notwithstanding any controverting presentation by the moving party, to defeat the motion.” *Cepeda, supra* at 738. See *Von Schönau-Riedweg v. Rothschild Bank AG*, 95 Mass. App. Ct. 471, 483 (2019) (hereafter “*Rothschild*”).

Here, where no evidentiary hearing was held, Doucet bears the burden of establishing prima facie facts, construed in his favor, that support jurisdiction. Because the sufficiency of the evidence under the prima facie standard presents a question of law, this Court reviews the motion judge’s original decision on the motion to dismiss de novo. *Rothschild, supra* at 484. See *Federal Nat. Mortg. Ass’n. v. Hendricks*, 463 Mass. 635, 637 (2012); *Galiastro v. Mortgage Electronic Registration Systems, Inc.*, 467 Mass. 160, 164 (2014).

IV. At A Minimum, Doucet Should Be Permitted To
Conduct Jurisdictional Discovery.

"Diligent plaintiffs who sue foreign defendants and make a colorable claim for personal jurisdiction 'may well be entitled to' jurisdictional discovery." *Chouinard, supra* at *13, quoting *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 625 (1st Cir. 2001) (citation omitted). "[T]he court has broad discretion in determining whether jurisdictional discovery is necessary." *Id.* at 625-26 (citation omitted). "Plaintiffs' obligation to be diligent includes the obligation to present facts which show why personal jurisdiction would be found if discovery were permitted." *Id.* at 626 (citation omitted).

Doucet has made a *prima facie* showing of facts that support the exercise of jurisdiction over FCA. This showing is sufficient to establish jurisdiction under both the long-arm statute and federal due process requirements. *Cepeda, supra* at 738. Should this Court find that Doucet's showing of facts related to FCA's Massachusetts contacts falls short of a *prima facie* showing, Doucet should be permitted the opportunity to conduct jurisdictional discovery. Doucet has been diligent throughout the lengthy

history of this litigation in making a "colorable claim" for jurisdiction again FCA. Here, jurisdictional discovery would reveal the same kind of contacts present in the *Ford Motor Co.* case, as both Ford and FCA are nationwide manufacturers and sellers of automobiles:

By every means imaginable – among them, billboards, TV and radio spots, print ads, and direct mail – Ford urges Montanans and Minnesotans to buy its vehicles, including (at all relevant times) Explorers and Crown Victorias. Ford cars – again including those two models – are available for sale, whether new or used, throughout the States, at 36 dealerships in Montana and 84 in Minnesota. And apart from sales, Ford works hard to foster ongoing connections to its cars' owners. The company's dealers in Montana and Minnesota (as elsewhere) regularly maintain and repair Ford cars, including those whose warranties have long since expired. And the company distributes replacement parts both to its own dealers and to independent auto shops in the two States. Those activities, too, make Ford money. And by making it easier to own a Ford, they encourage Montanans and Minnesotans to become lifelong Ford drivers.

Ford Motor Co., *supra* at 1028.

Assuming *arguendo* that additional evidence is required for Doucet to establish specific jurisdiction over FCA in this case, Doucet maintains that at a

minimum, he should be entitled to conduct jurisdictional discovery when this matter is remanded.

CONCLUSION

For the foregoing reasons, the plaintiff-appellants, Amy Doucet and Denise Sutton, as co-guardians of Paul Gregory Doucet, request that this Court vacate the judgment entered dismissing FCA US LLC and remand this case to Superior Court for further proceedings.

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MASS. R.A.P. 16(k) CERTIFICATE OF COMPLIANCE

I, Andrew D. Nebenzahl, Esq., attorney for the plaintiff-appellants Amy Doucet and Denise Sutton, as co-guardians of Paul Gregory Doucet, hereby certify that the foregoing Brief for the Plaintiff-Appellant complies with the rules of court that pertain to the filing of such briefs, including but not limited to: Mass. R.A.P. 16(e) (references to the record); Mass. R.A.P. 16(h) (length of briefs); Mass. R.A.P. 20 (form of briefs, appendices, and other papers).



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COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT
NO. 2022-P-0191

AMY DOUCET and DENISE SUTTON,
AS CO-GUARDIANS OF PAUL GREGORY DOUCET
Plaintiff-Appellants

v.

FCA US LLC
Defendant-Appellee

ON APPEAL FROM
ESSEX SUPERIOR COURT - NEWBURYPORT DIVISION

DOCKET NO. 2177CV00578

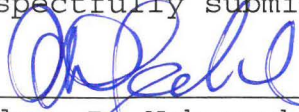
CERTIFICATE OF SERVICE WITH RULE 13(e) CERTIFICATION

I, Andrew D. Nebenzahl, Esq., hereby certify that
on June 7, 2021, I served one copy of each of the
following pleadings on each appellate counsel of
record and to the Clerk of the Appeals Court via e-
filing:

1. Brief for the Plaintiff-Appellants, Amy Doucet
and Denise Sutton, as co-guardians of Paul
Gregory Doucet;
2. Appendix Volume I;

I further certify under the penalties of perjury
that today's date is within the time fixed for filing.

Respectfully submitted,



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